

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 15,625
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare to terminate his Medicaid eligibility and to establish a spenddown amount for re-eligibility based on increased income. The issue is whether the Department misled the petitioner as to his eligibility for benefits if he took a new job.

FINDINGS OF FACT

1. The petitioner is a disabled man who receives \$572.00 per month in Social Security benefits. With this income alone, the petitioner is eligible for Medicaid.

2. In June of this year, the petitioner considered taking a job as a care provider for a disabled adult to be paid through a program of the Department of Aging and Disabilities. He began discussing the ramifications of this job with his worker at DSW and Social Security Administration personnel. He also wrote to the AARP with regard to the effect of working on his Social Security and Medicaid benefits.

3. The petitioner gave the worker at DSW his projected income of \$591.50 every two weeks (91 hours x \$6.50 per hour) and asked how it would effect his benefits.

He specifically asked the worker if he took the job, whether his Medicaid benefits would be in jeopardy before February of 1999, when he was to be reevaluated for Social Security eligibility. The worker replied that she did not know if the income was countable or not and that he would have to verify the amount and source of the income before he could get an answer. She was concerned about the source of the income because she thought it might be some kind of excludible mental health funding.

4. The petitioner did not provide that information in writing or get a ruling from the Department before he decided to go ahead and take the job. He did call the worker shortly before he started the job to talk about it. Neither the petitioner nor the worker can recall exactly what was said during the conversation. The petitioner got the impression from the conversation that he was being given a "go-ahead" for the job and that the income would not be a "problem." The worker denies that she would have confirmed the exclusion of the income without verifications and that she likely advised the petitioner again to provide that. She added that it is also likely she did not discourage the petitioner from seeking employment, as she generally supports attempts by persons on public benefits to pursue additional sources of income. Because the worker's testimony of the likely course of the conversation is consistent with the situation and her obligations, and

because the petitioner has no specific memory to the contrary, it is found that the worker did tell the petitioner during that conversation that a final decision on Medicaid eligibility could not be made until he verified the source and amount of the funding.

5. In August of 1998, after he began the job, the petitioner provided income information to the Department. Because the source was still not verified, the Departmental supervisor called the petitioner's employer for that information. At that time it was determined that the money did not come from an excluded source and had to be counted in determining the petitioner's income for eligibility purposes. A new calculation was performed which resulted in a net countable income of \$1,130.90 per month.<sup>1</sup> That figure was compared with the maximum possible income for a one-person Medicaid household of \$683 and the petitioner was determined ineligible until a spend-down of \$2,687.40 (the difference between the monthly Medicaid maximum and the monthly net countable income multiplied by six) was met during the next six months.

6. The petitioner was notified on August 27, 1998, that his Medicaid benefits would not be paid after September 6, 1998. The petitioner appealed that decision and has

---

<sup>1</sup> This figure was arrived at by adding together the petitioner's net monthly Social Security income of \$552 (\$572 minus a \$20 unearned income disregard) and his net monthly earned income of \$578.90 (Gross earned income of \$1222.81 minus \$65 and 50% of the remainder).

since received continuing benefits.

7. The petitioner does not dispute the countability of the income from his job nor the calculations performed by the Department. Rather he says that he was misled by the Department into taking this job which has led to the proposed elimination of his Medicaid benefits. He says that if he had known that his income would be fully counted against him he would have quit the job or would have worked fewer hours. There is no impediment to his quitting the job at this time or any time he wishes. As of the date of the hearing in October of 1998, the petitioner had neither quit his job nor cut back his hours.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner concedes that his income from employment is countable and that the totals make him ineligible for Medicaid benefits. He asks, however, that the Department be prevented or "estopped" from counting the income from his employment because he took the job and made the income based on assurances from the Department that such income would not be counted.

In order to receive this extraordinary remedy, the petitioner must show that his situation meets the four

elements of estoppel which are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Stevens v. DSW, 159 Vt. 408, 421 (1992); Burlington Fire Fighter's Association. v. City of Burlington, 149 Vt. 293, 299 (1988).

Applying these elements to the facts herein, it must be concluded that the petitioner has not put forth facts which meet any of the four criteria. First, the eligibility specialist handling the petitioner's case may have been orally informed about the amount the petitioner intended to earn but she did not know the source of the income which she needed to determine whether that income would be countable for Food Stamp purposes. The specialist expected the petitioner to provide that information to her and communicated that expectation to him. It cannot be concluded that the specialist knew or should have known all the pertinent facts.

Second, there is no indication that the specialist gave the petitioner any information on the countability of his income which she expected him to rely on regarding his eligibility for Medicaid. Nor does the evidence support a

finding that the petitioner received any specific information which he may have reasonably interpreted as a confirmation that his income would not affect his Medicaid and which he could have reasonably relied on. It appears instead that the petitioner wishfully inferred from the specialist's support for his desire to work, that his income would not be a problem for his Medicaid eligibility.

The petitioner seems to have been ignorant of the true facts regarding the countability of his income, which is element three of the test. However, that ignorance was due to his failure to supply information to the Department which would have enabled the specialist to make a final determination on eligibility. The Department had to research the source of the petitioner's income after he had already started working. He was notified soon thereafter that his income was countable and affected his eligibility for Medicaid. Even when he learned the true facts, the petitioner did not quit his job or cut down his hours.

Element four requires the petitioner to show that he has suffered some detriment from the misinformation he says he received. It is difficult from the facts presented to ascertain any harm whatsoever to the petitioner. On the contrary, he has been able over the last several months to both work and receive Medicaid coverage (due to benefits paid pending his appeal), which benefits will not be recovered by the Department. Until this appeal is decided,

he will continue to get Medicaid coverage. He will only experience a loss of Medicaid if he continues to work at his employment in the future. Since he has no contract or other commitment to his employer, he can, as he acknowledged, quit at any time. Although he has known since late August that his work income is affecting his Medicaid coverage, as of October, 1998, when the hearing was held, he had yet to take the step of leaving or cutting back his employment.

Inasmuch as the elements of estoppel are not met, and there being no issue that the petitioner's earned income was countable for the period in question, the Department's decision should be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

# # #